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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Implementation of Sections 309(j) and  
337 of the Communications Act of 1934  
as Amended

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WT Docket No. 99-87

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Directed to: The Commission

PETITION FOR RECONSIDERATION

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

AllCom, LLC ("AllCom"), by its attorneys and pursuant to the provisions of section 1.429 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.429 (2000), hereby petitions the FCC to partially reconsider its *Report and Order* ("Order") in the above-captioned rule making proceeding.<sup>1</sup> In particular, AllCom requests that the agency reconsider its decision to adopt a five-year "holding period" before certain licensees of non-Specialized Mobile Radio ("SMR") frequency assignments above 800 MHz are permitted to convert those frequency assignments for SMR use, or convey them to an SMR licensee.

I. BACKGROUND

AllCom is a provider of 800 MHz SMR services in the state of Alaska. AllCom is currently converting its SMR facilities to a digital system that will operate on a Motorola-developed iDEN platform, making AllCom the fourth SMR provider in the United States to use that digital transmission technology. AllCom's iDEN system will become fully operational in the second quarter of this year, and will serve several areas in the state of Alaska. AllCom is particularly interested in this rule making proceeding because it wishes to

<sup>1</sup> *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 99-87, rel. Nov. 20, 2000. See also 66 Fed. Reg. 33 (Jan. 2, 2001).

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secure additional 800 MHz spectrum, in order to supplement its transmission capacity from existing licensees and applicants for non-SMR frequency assignments.

## II. DISCUSSION

The *Order* adopts rules that permit 800 MHz SMR licensees to secure assignment of non-SMR 800 MHz frequency assignments<sup>2</sup> from existing licensees and convert those for SMR uses. The *Order* also permits existing non-SMR licensees to convert their frequency assignments for SMR uses. However, the *Order* contains a five-year holding period (“Restriction”), applicable to entities that obtain non-SMR licenses based upon applications submitted after November 9, 2000. *Order* at ¶¶ 115-116. Entities covered by the Restriction are not permitted to convert to SMR status or convey their authorizations to SMR licensees until they have held their licenses for five years. AllCom urges the FCC to reconsider the Restriction for several reasons. The Restriction is overly-regulatory, and may unnecessarily prevent B/ILT licensees from entering into a private transaction or undergoing internal reorganizations to make the most efficient use of their licensed frequency assignments.

### A. **There are Other Mechanisms by Which the FCC can Prevent Trafficking**

The *Order* states that the Restriction is necessary to avoid “trafficking” in spectrum licenses. However, there are other, less burdensome, measures by which the Commission could achieve that goal; the approach embodied by the Restriction is too severe. The Commission is apparently concerned that trafficking will likely occur when a “speculator” (an entity with presumably no need to obtain a license to meet its internal communications requirements) secures a non-SMR license solely for the purpose of later conveying that license to an SMR entity. While this may be a valid concern, it does not address what should

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<sup>2</sup> The *Order* only applies to Business and Industrial/Land Transportation (“B/ILT”) frequency assignments and not Public Safety frequency assignments.

be the Commission's actual concern: that entities not otherwise eligible to obtain authorizations are securing those licenses. After all, the *Order* presumably does not bar the assignment of improperly obtained non-SMR licenses to a legitimate non-SMR assignee. Yet, in both instances, the initial licensee (and not the ultimate assignee) is the entity about which the FCC should be concerned. A more rational administrative approach would be for the Commission to use its existing tools to combat what it believes to be trafficking.<sup>3</sup>

#### B. The Restriction Thwarts Legitimate Needs of SMR Licensees

The Commission should also reconsider its Restriction in light of its spectrum management obligations. By evidencing a fear of trafficking in connection with the permissible conversion of non-SMR spectrum, **the Commission is tacitly conceding that the demand for SMR spectrum far exceeds the demand for non-SMR spectrum.**<sup>4</sup> Thus, the Restriction, because it interferes with the marketplace demand for 800 MHz commercial spectrum, is contrary to the public interest. The Commission's initial spectrum management decisions for the 800 MHz frequency band were appropriately premised on the agency's goal of matching spectrum allocations to demand for certain types of spectrum.<sup>5</sup> The Commission should not stray from that goal of matching spectrum needs to services for which the spectrum is allocated. The Restriction, because it thwarts the obvious need of SMR licensees for additional spectrum, is contrary to that goal and should be reconsidered.

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<sup>3</sup> The FCC has extensive enforcement tools to combat what it perceives to be improper licensing activities. Those tools, and not a blanket restriction, should be employed. For example, the FCC's rules generally already prohibit the assignment of unconstructed 800 MHz frequency assignments. Thus, the enforcement of each licensee's construction obligations, as well as FCC diligence to determine the eligibility of licensees, are deterrents to improper licensing activities.

<sup>4</sup> If this were not the case, there would be no entities to whom speculators could sell ill-obtained authorizations.

The Restriction is also contrary to other recent Commission actions that favor allocating spectrum to the wireless services without eligibility restrictions. These Commission actions recognize that the marketplace, and not the FCC, should determine spectrum use. For example, when the FCC made spectrum available for “Phase II” 220-222 MHz radio services it declined to set-aside spectrum for internal-use-only systems, instead opting for open eligibility.<sup>6</sup> Under open eligibility schemes, both internal-use-only and commercial systems are permitted, but neither is mandated. The Commission has not reported any trafficking concerns with the 220-222 MHz radio service, or other radio services where there is open eligibility. The Restriction is thus contrary to the FCC’s recent actions that refuse to sort licensees by their line-of-business, or “eligibility.”

**C. The Restriction will Prevent Legitimate Transactions as well as those based on Speculation**

The FCC also should reconsider the Restriction because it will undoubtedly prevent private transactions that serve the public interest and that are not the product of speculation. If a recent applicant covered by the Restriction (e.g., a rural power company), desired to engage in a frequency “swap” transaction with an SMR licensee for technical purposes, the Restriction would not permit that transaction for five years. This result would occur even though the power company constructed and had operated its non-SMR frequency assignments for several years. Presumably, the parties to that transaction would be required

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<sup>5</sup> 90 FCC2d 1281, ¶¶ 51-52 (1982) (allocating remaining 800 MHz spectrum in pools, citing goal of ensuring that “user spectrum demands are met.”).

<sup>6</sup> 12 FCC Rcd 10943, ¶ 42 (1997) (“We find that it would be in the public interest to also allow commercial operations on the channels formerly designated solely for non-commercial operations. Our decision is based in part upon our conclusion that making the spectrum available for both commercial and non-commercial use is an effective means of promoting efficient use of the spectrum.”).

to seek a waiver of the FCC's rules, causing additional administrative burdens on the FCC, and unnecessarily delaying the transaction.

**D. If the FCC does not Eliminate the Restriction, it Should Reduce the Time Period that the Restriction is in Effect**

As an alternative to elimination of the Restriction, AllCom urges the Commission to consider reducing the time period covered by the Restriction to one year. Such a reduction may enable the Commission to achieve the goals stated in the *Report and Order*, but will otherwise not unnecessarily block private transactions when circumstances have changed for a non-SMR licensee since the time of its initial application for an FCC license.<sup>7</sup> A one-year period would also be consistent with the related anti-trafficking provision contained in the *Order* which prevents entities from conveying non-SMR licenses to SMR entities on multiple occasions in less than one year.<sup>8</sup> *Order* at ¶ 114. Alternatively, the Commission should clearly indicate that it will favorably review requests for waiver where the parties can demonstrate that there is no trafficking, but that there is a rational business purpose behind the otherwise prohibited transaction. Such a demonstration might also include a that, in a particular area, demand for 800 MHz non-SMR spectrum is weak compared to the demand for 800 MHz SMR spectrum.<sup>9</sup>

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<sup>7</sup> For example, a power company could obtain a non-SMR license on February 1, 2001, covering operations at a particular power plant. That power company may on February 1, 2002, decide to close that power plant and convey its non-SMR license to an SMR licensee. If the Restriction were reduced to a one-year period, the power company in this example would not be prevented from making a rational choice to convey its frequency assignments to an entity that has a need for the spectrum and that will be able to serve the public with the spectrum it acquires.

<sup>8</sup> The other five-year periods specified in the *Order*, such as those applicable to “unjust enrichment” payments by small business auction winners, *Order* at ¶ 115, are less relevant than one year because the FCC generally requires that non-SMR systems be constructed within one year. As noted above, mandating compliance with construction or related performance requirements is the FCC's primary means by which it can combat trafficking.

<sup>9</sup> The FCC has often stated in advance the circumstances under which it may be willing to grant a waiver of its rules. *See Revision of the Commission's Rules To Ensure Compatibility with Enhanced*

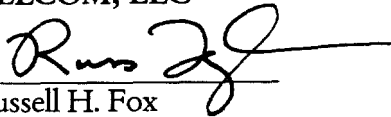
### III. CONCLUSION

WHEREFORE, THE FOREGOING PREMISES CONSIDERED, AllCom respectfully requests that the FCC reconsider its decision to implement a five-year holding period for applicants that secure non-SMR licenses based on applications submitted after November 9, 2000.

Respectfully submitted,

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